



March 27, 2007

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## ENGROSSED HOUSE BILL No. 1566

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DIGEST OF HB 1566 (Updated March 26, 2007 5:31 pm - DI 113)

**Citations Affected:** IC 4-13; noncode.

**Synopsis:** Minority and women's business enterprises. Expands the definition of "minority business enterprise" to include nonprofit corporations. Requires that the statistical analysis required of the governor's commission on minority and women's business enterprises must: (1) use criteria for participation of minority business enterprises established in *Richmond v. Croson*; (2) include information on both contracts and subcontracts; and (3) use data based on the combined capacity of minority businesses in Indiana and not just regional data. Requires the commission to conduct an analysis during the 2007-2008 fiscal year. Specifies that the goals and objectives concerning the awarding of contracts to minority and women's business enterprises (Continued next page)

**Effective:** July 1, 2007.

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**Crawford, Porter, Duncan, Welch**  
(SENATE SPONSORS — FORD, SIMPSON)

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January 23, 2007, read first time and referred to Committee on Interstate and International Cooperation.

February 20, 2007, amended, reported — Do Pass.

February 23, 2007, read second time, ordered engrossed. Engrossed.

February 26, 2007, read third time, passed. Yeas 94, nays 4.

SENATE ACTION

March 5, 2007, read first time and referred to Committee on Economic Development and Technology.

March 27, 2007, amended, reported favorably — Do Pass.

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applies to contracts of state educational institutions. Specifies that the statistical analysis used to establish the goals applies to contracts and subcontracts of state educational institutions. Requires a contractor whose offer designated minority or women's business enterprises to furnish any supplies or perform any work under the contract awarded by a state agency to the contractor to: (1) notify in writing each minority and women's owned business enterprise designated in the contractor's offer that the contractor has been awarded the contract; and (2) give copies of each notification to the state agency that awarded the contract. Provides for remedies if the contractor fails to satisfy these requirements. Requires the department of administration to adopt rules to resolve grievances arising under the minority and women's owned business enterprise statute.

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March 27, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1566

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-13-16.5-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. ~~As used~~ **(a) The**  
3 **definitions in this section apply throughout** this chapter.

4 **(b)** "Commission" refers to the governor's commission on minority  
5 and women's business enterprises established under section 2 of this  
6 chapter.

7 **(c)** "Commissioner" refers to the deputy commissioner for minority  
8 and women's business enterprises of the department.

9 **(d)** "Contract" means any contract awarded by a state agency for  
10 construction projects or the procurement of goods or services,  
11 including professional services.

12 **(e)** "Department" refers to the Indiana department of administration  
13 established by IC 4-13-1-2.

14 **(f)** "Minority business enterprise" or "minority business" means an  
15 individual, partnership, corporation, limited liability company, or joint  
16 venture of any kind that is owned and controlled by one (1) or more  
17 persons who are:

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(1) United States citizens; and

(2) members of a minority group.

**(g) "Nonprofit corporation" means a corporation that:**

**(1) is exempt from federal income taxation under Internal Revenue Code Section 501(c)(3);**

**(2) is headquartered in Indiana;**

**(3) has been in continuous existence for at least five (5) years; and**

**(4) has a board of directors that has been in compliance with all the other requirements of this chapter for at least five (5) years.**

**(h) "Owned and controlled" means the following:**

**(1) If the business is a nonprofit corporation, a majority of the board of directors.**

**(2) If the business is a business other than a nonprofit corporation, having:**

**(1) (A) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;**

**(2) (B) control over the management and active in the day-to-day operations of the business; and**

**(3) (C) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.**

**(i) "Minority group" means:**

**(1) Blacks;**

**(2) American Indians;**

**(3) Hispanics;**

**(4) Asian Americans; and**

**(5) other similar minority groups. as defined by 13 CFR 124.103.**

**(j) "Separate body corporate and politic" refers to an entity established by the general assembly as a body corporate and politic.**

**(k) "State agency" refers to any authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government.**

**(l) "State educational institution" has the meaning set forth in IC 20-12-0.5-1.**

SECTION 2. IC 4-13-16.5-2, AS AMENDED BY P.L.4-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) There is established a governor's commission on minority and women's business enterprises. The commission shall consist of the following members:

(1) A governor's designee, who shall serve as chairman of the

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commission.

(2) The commissioner of the Indiana department of transportation.

(3) The chairperson of the board of the Indiana economic development corporation or the chairperson's designee.

(4) The commissioner of the department.

(5) Nine (9) individuals with demonstrated capabilities in business and industry, especially minority and women's business enterprises, appointed by the governor from the following geographical areas of the state:

(A) Three (3) from the northern one-third (1/3) of the state.

(B) Three (3) from the central one-third (1/3) of the state.

(C) Three (3) from the southern one-third (1/3) of the state.

(6) Two (2) members of the house of representatives, no more than one (1) from the same political party, appointed by the speaker of the house of representatives to serve in a nonvoting advisory capacity.

(7) Two (2) members of the senate, no more than one (1) from the same political party, appointed by the president pro tempore of the senate to serve in a nonvoting advisory capacity.

Not more than six (6) of the ten (10) members appointed or designated by the governor may be of the same political party. Appointed members of the commission shall serve four (4) year terms. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

(b) Each member of the commission who is not a state employee is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as provided under IC 4-13-1-4 and in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each legislative member of the commission is entitled to receive the same per diem, mileage, and travel allowances established by the legislative council and paid to members of the general assembly serving on interim study committees. The allowances specified in this subsection shall be paid by the legislative services agency from the amounts appropriated for that purpose.

(d) A member of the commission who is a state employee but who is not a member of the general assembly is not entitled to any of the following:

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(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(3) Other expenses actually incurred in connection with the member's duties.

(e) The commission shall meet at least four (4) times each year and at other times as the chairman considers necessary.

(f) The duties of the commission shall include but not be limited to the following:

(1) Identify minority and women's business enterprises in the state.

(2) Assess the needs of minority and women's business enterprises.

(3) Initiate aggressive programs to assist minority and women's business enterprises in obtaining state contracts.

(4) Give special publicity to procurement, bidding, and qualifying procedures.

(5) Include minority and women's business enterprises on solicitation mailing lists.

(6) Define the duties, goals, and objectives of the deputy commissioner of the department as created under this chapter to assure compliance by all state agencies, separate bodies corporate and politic, and state educational institutions with state and federal legislation and policy concerning the awarding of contracts **(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)** to minority and women's business enterprises.

(7) Establish annual goals:

(A) for the use of minority and women's business enterprises; and

(B) derived from a statistical analysis of utilization study of state contracts **(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)** that are required to be updated every five (5) years.

(8) Prepare a review of the commission and the various affected departments of government to be submitted to the governor and the legislative council on March 1 and October 1 of each year, evaluating progress made in the areas defined in this subsection.

**(9) Ensure that the statistical analysis required under this section:**

(A) is based on goals for participation of minority business

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enterprises established in *Richmond v. Croson*, 488 U.S. 469 (1989);

(B) includes information on both contracts and subcontracts (including, notwithstanding section 1(d) of this chapter or any other law, contracts and subcontracts of state educational institutions); and

(C) uses data on the combined capacity of minority and women's businesses enterprises in Indiana and not just regional data.

(g) The department shall adopt rules of ethics under IC 4-22-2 for commission members other than commission members appointed under subsection (a)(6) or (a)(7).

(h) The department shall furnish administrative support and staff as is necessary for the effective operation of the commission.

SECTION 3. IC 4-13-16.5-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 8. (a) This section applies to a contractor whose offer designated minority businesses or women's business enterprises to furnish any supplies or perform any work under the contract awarded to the contractor.**

**(b) As used in this section, "contract" refers to any of the following:**

**(1) A contract for the purchase of supplies by a state agency.**

**(2) A contract for the performance of services for a state agency.**

**(3) A public works contract (as defined in IC 4-13.6-1-14).**

**(4) A contract to perform professional services (as defined in IC 4-13.6-1-11) in connection with a public works contract.**

**(c) As used in this section, "contractor" refers to a person awarded a contract by a state agency.**

**(d) As used in this section, "offer" means a response to a solicitation. The term includes a bid, proposal, and quote.**

**(e) As used in this section, "solicitation" means the procedure by which a state agency invites persons to submit an offer to enter into a contract with the state agency. The term includes an invitation for bids, a request for proposals, and a request for quotes.**

**(f) Before beginning work on a contract, a contractor shall do the following:**

**(1) Notify in writing each minority business and women's business enterprise designated in the contractor's offer that the contractor has been awarded the contract.**

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(2) Give copies of each notification to the state agency that awarded the contract.

(g) If a contractor fails to comply with subsection (f), the awarding state agency may consider the failure a breach of contract and do any of the following:

(1) Cancel the contract.

(2) Collect from the contractor all funds paid to the contractor under the contract.

(3) Exercise any of the state's rights set out in the contract.

(4) Use the failure as a basis for finding the contractor not responsible when awarding other contracts.

SECTION 4. IC 4-13-16.5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The department shall adopt rules under IC 4-22-2 to establish procedures to resolve grievances arising under this chapter.

(b) The rules may include informal procedures to resolve grievances.

(c) The procedures established under the rules must provide for final resolution of grievances before either of the following:

(1) A panel of three (3) commission members. A panel formed under this subdivision must consist of at least two (2) commission members described in section 2(a)(5) of this chapter.

(2) The commission. However, if the commission acts to resolve a grievance under this subdivision, members of the commission described in section 2(a)(6) or 2(a)(7) may not participate in the proceeding.

(d) Final resolution of grievances arising under this chapter are subject to IC 4-21.5.

SECTION 5. [EFFECTIVE JULY 1, 2007] (a) Notwithstanding the provisions in IC 4-13-16.5-2, as amended by this act, requiring that statistical analysis of the use of minority and women's business enterprises must be updated every five (5) years, the commission on minority and women's business enterprises shall:

(1) conduct; or

(2) enter into a contract for;

the statistical analysis of the use of minority and women's business enterprises during the fiscal year beginning July 1, 2007, and ending June 30, 2008.

(b) The criteria for the analysis in IC 4-13-16.5-2, as amended by this act, must be used for the statistical analysis required under

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- 1       **this SECTION.**  
2       **(c) This SECTION expires December 31, 2008.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Interstate and International Cooperation, to which was referred House Bill 1566, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 16, after "contracts" insert **"(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)"**.

Page 4, line 21, after "contracts" insert **"(including, notwithstanding section 1(d) of this chapter or any other law, contracts of state educational institutions)"**.

Page 4, line 33, after "subcontracts" delete ";" and insert **"(including, notwithstanding section 1(d) of this chapter or any other law, contracts and subcontracts of state educational institutions);"**.

and when so amended that said bill do pass.

(Reference is to HB 1566 as introduced.)

HARRIS E, Chair

Committee Vote: yeas 8, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred House Bill No. 1566, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 2 and 3, begin a new paragraph and insert:

**"(g) "Nonprofit corporation" means a corporation that:**

- (1) is exempt from federal income taxation under Internal Revenue Code Section 501(c)(3);**
- (2) is headquartered in Indiana;**
- (3) has been in continuous existence for at least five (5) years;**
- and**
- (4) has a board of directors that has been in compliance with all the other requirements of this chapter for at least five (5) years."**

Page 2, line 3, delete "(g)" and insert **"(h)"**.

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Page 2, line 14, delete "(h)" and insert "(i)".  
Page 2, line 19, delete "groups," and insert "groups."  
Page 2, line 19, strike "as defined in 13 CFR 124.103."  
Page 2, line 20, delete "(i)" and insert "(j)".  
Page 2, line 22, delete "(j)" and insert "(k)".  
Page 2, line 26, delete "(k)" and insert "(l)".

and when so amended that said bill do pass.

(Reference is to HB 1566 as printed February 20, 2007.)

FORD, Chairperson

Committee Vote: Yeas 9, Nays 1.

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**Y**

